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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

M.K.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E072211

(Super.Ct.No. RIJ1700473)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Murphy,
Judge. Petition denied.

David Goldstein for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Prabhath Shettigar, Deputy County Counsel, for Real Party in Interest.

After the disposition hearing, the juvenile court denied petitioner, M.K. (Mother), reunification services as to K.K.2 (Minor), born in November 2018 pursuant to the bypass provision of Welfare and Institutions Code section 361.5, subdivision (b)(10)¹ (reunification services terminated as to a previous child) and set the section 366.26 hearing. Mother contends insufficient evidence supports the order denying Mother reunification services. We deny the petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

Upon Minor's birth, personnel from plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), received an immediate response referral when Mother tested positive for methamphetamine. She admitted using methamphetamine a week and a half earlier. Mother had not received any prenatal care throughout her pregnancy with Minor.

Mother later admitted to using methamphetamine several times weekly during her pregnancy with Minor, since February 2018. She said she had started using methamphetamine at the age of 14 and continued until she was 17 years old; she then began using again at age 25.

Mother had an open dependency proceeding regarding her other child, K.K.1 (born in May 2017), which DPSS personnel initiated when K.K.1 tested positive for

¹ All further statutory references are to the Welfare and Institutions Code.

methamphetamine at his birth.² Mother had reported using methamphetamine throughout her pregnancy with K.K.1 and had not received any prenatal care throughout her pregnancy with him. On June 26, 2017, the juvenile court removed K.K.1 from Mother's custody and ordered reunification services.

Mother entered an inpatient substance abuse program on June 2, 2017, and completed the program in November 2017. The court apparently returned K.K.1 to Mother's custody and placed her on family maintenance services in January 2018; however, Mother admitted using methamphetamine in February 2018. She tested positive for methamphetamine on February 20 and 26, 2018.

Mother then participated in an additional inpatient treatment program; however, Mother tested positive for methamphetamine in April 2018. On April 26, 2018, DPSS personnel filed a supplemental juvenile dependency petition and the juvenile court detained K.K.1 the next day. On June 22, 2018, the court found the allegations in the supplemental petition true, removed K.K.1 from Mother's custody, and denied Mother reunification services. The court set a contested 366.26 hearing for December 20, 2018.

On November 9, 2018, DPSS personnel filed a juvenile dependency petition as to Minor alleging Mother abused controlled substances during her pregnancy and did not receive prenatal care (b-1); had a chronic, unresolved history of abusing controlled

² Mother had two additional children who were apparently the objects of dependency proceedings in September 2015 and April 2016, but those children were apparently never detained and were later described as living with the maternal grandmother in Arizona and, later, uncles in Sacramento.

substances (b-2); had an open dependency case due to substance abuse in which her reunification services had been terminated (b-3); and had a criminal history (b-4).³ On November 13, 2018, the juvenile court detained Minor.

In the jurisdiction and disposition report filed on December 4, 2018, the social worker recommended that the court deny Mother reunification services pursuant to section 361.5, subdivision (b)(10) and set the section 366.26 hearing. The social worker opined that Mother had “not demonstrated an effort to treat problems that led to the removal of the sibling[] in the dependency case.” The report reflected Mother had suffered an arrest in 2007 for driving under the influence and another in 2015 for receiving stolen property.

The social worker referred Mother for substance abuse treatment, parenting classes, and individual counseling on November 16, 2018. Mother stated she had already enrolled in an outpatient substance abuse program on November 8 or 9, 2016. She tested negative for drugs on November 27, 2018. Mother had twice weekly visitation with Minor; Mother arrived on time and engaged positively with Minor.

In an addendum report filed on January 9, 2019, the social worker reported Mother had tested negative for controlled substances on January 4, 2019. Mother had enrolled in parenting classes, individual counseling, and an outpatient substance abuse program. On

³ The b-4 allegation is odd at this point in the case considering the detention report reflects that Mother had no known criminal history.

January 14, 2019, the juvenile court found the allegations in the petition true and continued the matter for a contested disposition hearing.

In an addendum report filed on February 15, 2019, the social worker reported Mother failed to show for a drug test on December 27, 2018. She tested negative on January 14, 2019. Mother completed her parenting program on January 31, 2019; she continued to participate in individual therapy and an outpatient substance abuse program. Mother visited regularly with Minor with no concerns.

On February 21, 2019, the juvenile court first held a hearing on Mother's section 388 petition in the case as to K.K.1. The court denied her petition and then terminated Mother's parental rights as to K.K.1. The court then held the contested disposition hearing as to Minor.

The social worker testified Mother had completed an outpatient substance abuse program on November 14, 2018,⁴ and a parenting program on January 30, 2019. Mother had been attending 12-step meetings regularly. Mother had participated in random drugs tests with no positive results since November 2018.

The court observed: "In the grand scheme of mom's history in this case, it is—even though it's three and a half to four months of time that she has participated and graduated from parenting, has been sober, that it is not in this Court's opinion to be considered reasonable efforts when looking at it in totality, that mother has a chronic and

⁴ This seems questionable as Mother had previously said she had enrolled only one week earlier. The social worker most likely meant that Mother had enrolled in the program on that date.

severe substance abuse history.” The court further noted: “I think [the code] speaks to what [Mother’s] efforts have been essentially since her services were terminated for [K.K.1], and I don’t find that mother has made reasonable efforts sufficient to grant her additional six months of services.” The court removed Minor from Mother’s custody, denied Mother reunification services pursuant to section 361.5, subdivision (b)(10), and set the section 366.26 hearing.

II. DISCUSSION

Mother contends insufficient evidence supports the juvenile court’s determination to deny her reunification services pursuant to section 361.5, subdivision (b)(10). We disagree.

“Section 361.5, subdivision (b), states that ‘[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . and that parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling’” (*In re B.H.* (2016) 243 Cal.App.4th 729, 735-736.) ““When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be ““an unwise use of governmental resources.”” [Citation.]’ [Citation.]” (*Id.* at p. 736.)

“Section 361.5, subdivision (b)(10), contemplates a two-prong inquiry: (1) whether the parent previously failed to reunify with the child’s sibling or half sibling; and (2) whether the parent ‘subsequently made a reasonable effort to treat the problems that led to [the] removal of the sibling or half sibling.’ [Citation.]”⁵ (*In re B.H.*, *supra*, 243 Cal.App.4th at p. 736.) “‘We do not read the ‘reasonable effort’ language in the bypass provisions to mean that any effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the duration, extent and context of the parent’s efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent’s progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the measure of success achieved is properly considered a factor in the juvenile court’s determination of whether an effort qualifies as reasonable.’ [Citation.]” (*In re D.H.* (2014) 230 Cal.App.4th 807, 816.)

“[T]he court [also] retains authority to order services if it finds by clear and convincing evidence they would be in the children’s best interests. [Citation.] In making

⁵ Mother concedes the first prong is satisfied here, that Mother failed to reunify with Minor’s sibling. Mother’s argument focuses on the second prong, that insufficient evidence supports the juvenile court’s finding that she did not make reasonable efforts to treat the problems that led to the removal of K.K.1.

its determination, the court may consider the ‘failure of the parent to respond to previous services.’ [Citation.]” (*In re Lana S.* (2012) 207 Cal.App.4th 94, 109.) The parent “has the burden of proving her children would benefit from the provision of court-ordered services. [Citation.]” (*Ibid.*)

“‘The standard of review of a dispositional order on appeal is the substantial evidence test, “bearing in mind the heightened burden of proof.”’ [Citations.]” (*In re Madison S.* (2017) 15 Cal.App.5th 308, 325.) “[O]nly one valid ground is necessary to support a juvenile court’s decision to bypass a parent for reunification services” (*Id.* at p. 324; *In re Lana S.*, *supra*, 207 Cal.App.4th at p. 108 [evidence of parent’s lengthy history of drug abuse sufficient to deny parent reunification services].)

Here, the reason for the termination of Mother’s reunification services for Minor’s sibling was Mother’s continuing abuse of methamphetamine. Mother tested positive for methamphetamine at K.K.1’s birth. Mother completed an inpatient substance abuse program on July 17, 2017, immediately enrolling in an outpatient program thereafter which she completed in November 2017. Nonetheless, Mother tested positive for methamphetamine twice in February 2018. She enrolled in another inpatient substance abuse program thereafter, but tested positive for methamphetamine again in April 2018. The juvenile court terminated Mother’s reunification services as to K.K.1 on June 22, 2018.

Nevertheless, Mother made no efforts to treat the problem which led to the removal of K.K.1 between the date of the termination of her reunification services as to

K.K.1 and the birth of Minor. Indeed, Mother admitted she continued to use methamphetamine several times weekly during the entirety of her pregnancy with Minor, from February 2018 to November 2018. Mother had a self-admitted, long history of abusing methamphetamine; she started using for three years when she was 14 years of age; she began using again when she was 25 years old and continued for five more years. Moreover, Mother failed to obtain any prenatal care for Minor which was another basis for the removal of K.K.1. Mother's failure to make any efforts at remedying the reason for the removal of K.K.1 during her pregnancy with Minor constitutes, in and of itself, sufficient evidence to support the juvenile court's application of the bypass provision of section 361.5, subdivision (b)(10).

Mother argues that insufficient evidence supports the juvenile court's finding due to her efforts following the birth and detention of Minor. Mother notes that she enrolled in and completed an outpatient substance abuse program and parenting program. She consistently participated in 12-step meetings and had no positive drug tests since early November. Yet, when weighed against Mother's multiple failures to remain clean even after participating in and completing previous substance abuse programs, the court's determination that Mother had not made sufficient progress is supported by substantial evidence. At best, Mother had remained sober for only three months at the time the court declined to grant her reunification services as to Minor. Moreover, Mother failed to show for one test in December 2018, which would count as a positive test. Substantial evidence supports the juvenile court's order denying Mother reunification services.

III. DISPOSITION

The petition for extraordinary writ is denied.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.